No. 82-6577

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1982

HAROLD GLENN WILLIAMS,

Petitioner,

v.

STATE OF GEORGIA,

Respondent.

On Petition for Writ of Certiorari
to the Supreme Court of Georgia

BRIEF IN OPPOSITION FOR THE RESPONDENT

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QUESTIONS PRESENTED

1.

Were the trial court's findings that the statement made by the Petitioner on November 12, 1980 was voluntary, supported by the record and was the statement properly admitted at trial?

2.

Did the trial court properly apply principles of state evidentiary law in allowing the admission into evidence of a peace warrant and in charging on prior difficulties between the victim and the Petitioner?

3.

Did the trial court properly allow the admission into evidence of certain photographs at trial?

4.

Was the testimony of a police officer concerning the furnishing of a copy of the Petitioner's statement to defense counsel properly admitted?

5.

Did the trial court correctly determine that a directed verdict was not warranted as to either the burglary or the murder charge?

6.

Was the closing argument of the prosecution constitutional?

7.

Was the jury properly charged concerning its consideration of intent to kill during the sentencing phase?

8.

Was the evidence presented at trial sufficient to support a finding of both statutory aggravating circumstances?

9.

Did the trial court properly deny the motion for a new trial?

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PART ONE

STATEMENT OF THE CASE

Petitioner, Harold Glenn Williams, was indicted by the Wayne County grand jury for burglary and for the murder of Petitioner's grandfather, Archie S. Lane. These crimes occurred on June 22, 1980. (R. 1-3). Petitioner was tried pursuant to the Unified Appeal Procedure. After a jury trial was conducted, the jury returned a guilty verdict on both counts on February 10, 1982. The next day the death penalty was imposed. In deciding in favor of the death penalty, the jury specifically found that the offense of murder was committed while the Petitioner was engaged in the commission of a burglary, O.C.G.A. § 17-10-30(b)(2); Ga. Code Ann. § 27-2534.1(b)(2), and found that the offense of murder "was outrageously and wantonly vile, horrible, and inhuman in that it involved torture and depravity of mind, or an aggravated battery to the victim, Archie Lane." (R. 27). O.C.G.A. § 17-10-30(b)(7); Ga. Code Ann. § 27-2534.1(b)(7).

Petitioner's convictions and sentences were subsequently appealed to the Supreme Court of Georgia pursuant to the automatic appeal procedure. On appeal, the court considered all issues raised in the instant petition for a writ of certiorari and affirmed both convictions and sentences. Williams v. State, 250 Ga. 553, ___S.E.2d___(1983). Petitioner has subsequently filed the instant petition in this Court again challenging his convictions and sentences imposed in the Superior Court of Wayne County.

PART TWO

STATEMENT OF FACTS

A detailed statement of facts was set forth by the Supreme Court of Georgia in its opinion on direct appeal. As a copy of that opinion is attached to the petition filed by the Petitioner in this case, no further statement will be set forth except as necessary to elaborate on the issues presented in the petition.

PART THREE

REASONS FOR NOT GRANTING THE WRIT

I. THE FINDINGS BY THE TRIAL COURT THAT PETITIONER'S STATEMENT OF NOVEMBER 12, 1980, WAS VOLUNTARY, ARE SUPPORTED BY THE RECORD AND NO FEDERAL CONSTITUTIONAL QUESTION IS PRESENTED BY THE TWO ISSUES CHALLENGING THE ADMISSION OF THE STATEMENT.

Petitioner asserts that the trial court erroneously ruled that the statement he made on November 12, 1980, was voluntary and also asserts that the trial court improperly allowed the statement to be admitted into evidence.

A Jackson v. Denno hearing was held at trial concerning the statement made by the Petitioner on November 12, 1980. At that time, the state presented the testimony of Sergeant F. J. Schuman and also Petitioner's former defense counsel, Grayson Lane. Sergeant Schuman testified that at the time that the Petitioner's statement was made on November 12, 1980, no one in his presence held out any inducements to cause the Petitioner to make a statment.

Mr. Lane was called to testify and stated that the meeting on November 12, 1980, was not a custodial interrogation, but instead, the Petitioner was offering his statement upon the advice of counsel. According to the testimony of Mr. Lane, he told the Petitioner in the presence of Sergeant Schuman that there were no promiseS, no inducements and no hopes of reward or benefit. Mr. Lane advised the Petitioner that he should not expect anything whatsoever from the making of his statement. (H.T., 1-20-80, 106-107). Mr. Schuman advised the Petitioner that if he did not want to make a statement the two would leave and Petitioner could go home. Mr. Lane also advised the Petitioner that Sergeant Schuman was not part of any agreement

that could possibly be made with the district attorney. Mr. Lane stated that he told the Petitioner that Sergeant Schuman owed him nothing. "You either make this statement, blank, no promises, no expectations, or you don't." (H.T., 1-20-82, 111). Mr. Lane testified that the decision to make the statement was a joint decision between himself and the Petitioner.

The trial court considered the totality of the circumstances presented at trial and concluded that the state had shown voluntariness by a preponderance of the evidence. The court concluded that the statement was made "without hope of reward, promises made, inducements offered. . . ." (R. 16).

It is well-recognized that the state has the burden of establishing voluntariness by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477 (1971). It is also recognized that the court must consider the totality of the circumstances in making its decision. See Clewis v. Texas, 386 U.S. 707 (1967).

In considering the totality of the circumstances, it is clear that the trial court properly determined that the statement was voluntary. The Supreme Court of Georgia found, "the colloquy . . . makes clear that the defendant understood the conditions under which his statement was being made." Williams, supra, 250 Ga. at 559. The court went on to note that where any hope or fear was a product of a defendant's own mind, rather than the inducement of others, the statement was admissible. Id.

Respondent submits that Petitioner has not shown that the state courts misapplied any holdings by this Court in reaching a decision as to the admissibility of the Petitioner's statement. The trial court and the Supreme Court of Georgia correctly concluded from the facts presented that the state had made a showing of voluntariness by a preponderance of the evidence. Therefore, this issue presents no federal constitutional question for review by this Court.

II. THE TRIAL COURT PROPERLY APPLIED PRINCIPLES OF STATE EVIDENTIARY LAW IN ALLOWING THE ADMISSION INTO EVIDENCE OF A PEACE WARRANT AND IN CHARGING ON PRIOR DIFFICULTIES BETWEEN THE VICTIM AND THE PETITIONER.

During a pretrial hearing, the trial court overruled a motion in limine filed by the Petitioner pertaining to a peace warrant taken by the victim against the Petitioner, "provided evidence of the facts surrounding the peace warrant are presented prior to any evidence concerning the peace warrant itself." (R. 10). A proper foundation was then laid at trial concerning the circumstances behind the peace warrant.

The evidence presented at trial showed that the Petitioner and the victim had been involved in some type of quarrel between eight and nine months prior to the victim's death. The peace warrant was issued by the Justice of the Peace at that time because the victim indicated he was afraid of the Petitioner. Another witness testified that he was told by the Petitioner that the victim sought the peace warrant after a shooting incident which related to an effort by the Petitioner to force the victim to pay certain insurance proceeds to a named individual.

Further testimony indicated that a threatening note was delivered by the Petitioner to the house of Arvell Lane to be delivered to the victim approximately a month or two after the incident involving the peace warrant. There was testimony that the victim and Petitioner were never seen together after that point. There was also testimony that the Petitioner made a statement approximately a month or two before the death of the victim concerning whether his grandfather's life was worth $3,000.00. See Williams v. State, supra at 560.

Under Georgia law in a murder prosecution, "evidence of prior quarrels and difficulties between the defendant and the

victim, which persists until the time of the killing, thereby shedding light upon the motive of the killing and explaining conduct, is admissible." Nicholson v. State, 249 Ga. 775, 777, 294 S.E.2d 485 (1982). As noted by the Supreme Court of Georgia on direct appeal, the issuance of the peace warrant "was only one incident. . . in a series in which the state sought to prove the defendant's motive in killing the victim." Williams, supra at 561. The Supreme Court concluded that the evidence concerning the peace warrant was an element of the circumstances showing the difficulties between the victim and the Petitioner which continued up until the time of the killing.

Based upon the above, it is clear that the trial court and the Supreme Court of Georgia determined that state evidentiary principles were properly followed in the instant case in allowing the admission into evidence of a peace warrant. Petitioner has shown no constitutional violation by the introduction of this peace warrant and, thus, has shown no basis for this Court to consider this issue at this time.

Petitioner also asserts that the trial court erred in charging the jury concerning previous difficulties. The trial court specifically charged that the Petitioner was on trial for only the offenses charged in the indictment and that he was not on trial for any other charge. (T. V, 20). The court went on to charge as follows:

> He is not on trial on the count of any other alleged offense or offenses and any other evidence in this case with reference to any previous quarrels between the deceased and the defendant are admitted for the purpose of your consideration solely and only under the provisions of the law that where knowledge, motive, intent, good or bad faith, or identity, of any other matter dependent upon a person's state of mind are

involved as material elements in the offense of which he is on trial.

Evidence of such quarrels or difficulties, if any, are admissible for consideration of the jury insofar only as it might tend to illustrate the defendant's state of mind on the subject involved, if you think it does so illustrate it.

The Court does not intimate or express to you any opinion as to whether or not these quarrels, differences, or difficulties between the defendant and the deceased did in fact exist. You may consider it solely with reference to mental state or intent of the defendant insofar as same is applicable, or refers to, or illustrates that which is embraced in this bill of indictment which you will have out with you for your consideration, and for no other purpose.

In order for you to consider said quarrels, differences or difficulties between the defendant and the deceased, as it relates to the charges for which the defendant is on trial, the said conduct between the parties must not be remote in time to the alleged occurrence, and must be shown by the evidence to have been continuing in nature from the date of such conduct up until the time of the alleged occurrence under investigation.

(T. V, 20-21).

The Supreme Court of Georgia in considering this point merely noted that as evidence concerning prior difficulties was

properly admitted, the trial court correctly charged on recent prior difficulties. Williams v. State, supra, at 561. It has already been noted that under Georgia law evidence of previous difficulties between a defendant and the victim is admissible where the evidence illustrates state of mind or the state of feelings between the two. The court correctly instructed the jury as to its consideration of the evidence in the charge and the charge was a proper statement of Georgia law.

Respondent submits that neither of these two issues present a federal constitutional question for review by this Court. Improper admission of evidence could only constitute a federal constitutional issue if it served to deny the Petitioner a fundamentally fair trial. It is clear from the record in the instant case that Petitioner received a fundamentally fair trial and no due process violation occurred. Therefore, these issues present nothing for review by this Court and would not justify granting the petition.

III. THE TRIAL COURT DID NOT ERR IN ADMITTING CERTAIN PHOTOGRAPHS AT TRIAL.

Petitioner has challenged the admission into evidence of certain photographs at trial. Petitioner has asserted that the photographs taken of the victim at the crime scene and at the autopsy were prejudicial and constituted error.

Under Georgia law, photographs of the victim's body taken before and after the autopsy can be admissible. See Lamb v. State, 241 Ga. 10, 243 S.E.2d 59 (1978). Furthermore, in the instant case, the photographs were also relevant to the aggravating circumstance sought to be proved by the State.

On direct appeal, the Supreme Court of Georgia concluded, "the duplicative photographs and the autopsy photo should not have been admitted," but then went on to note, "it cannot be said that their admission constitutes reversible error in light of defendant's two incriminating admissions and the other evidence." Williams v. State, supra, at 561.

Respondent submits that the photographs in question in the instant case were clearly relevant to the issue sought to be proved at trial. Furthermore, as noted by the Supreme Court of Georgia, even though the photographs may have been improperly admitted, the evidence in the instant case of the Petitioner's guilt, particularly in light of his own incriminating statements, was so overwhelming as to not justify the granting of relief as to this point. Even if the admission into evidence of these photographs was erroneous, this mere evidentiary violation is not sufficient to conclude that the Petitioner received a fundamentally unfair trial and to justify the granting of the petition for a writ of certiorari.

IV. NO CONSTITUTIONAL VIOLATION HAS BEEN SHOWN BY THE ADMISSION OF TESTIMONY BY A POLICE OFFICER THAT HE FURNISHED COPIES OF THE STATEMENT OF THE PETITIONER TO DEFENSE COUNSEL.

Petitioner has asserted that the testimony elicited from Sergeant Schuman to the effect that defense counsel was furnished with a copy of Petitioner's statement made on November 12, 1980, was error. Petitioner's only assertion concerning this is that the evidence was irrelevant and that it tended to imply that the defense counsel was a part of such statement.

On direct appeal, the Supreme Court of Georgia considered this particular point, the Court held, "it was clear during the trial that the defendant had been represented by a different attorney when he made the November 12, 1980, statement, and we find no error here." Williams, supra, at 560. Respondent submits that this conclusion by the Supreme Court of Georgia is a correct determination. The one statement made by the officer that the statement was furnished to defense counsel, who is not the attorney that represented the Petitioner at trial, does not tend to imply that counsel had anything to do with the

statement, nor is it sufficiently irrelevant to raise any type of constitutional violation. Therefore, Respondent submits that no federal constitutional question has been presented by this issue.

V. THE TRIAL COURT DID NOT ERR IN DENYING A MOTION FOR A DIRECTED VERDICT AS TO THE BURGLARY OR MURDER CHARGE.

Petitioner has asserted that the trial court erred in not directing a verdict of not guilty as to both counts of the indictment. Petitioner has not challenged the sufficiency of the evidence to support these charges per se, but has merely raised the allegation concerning the denial of a directed verdict of acquittal.

Under Georgia law, there is a specific provision pertaining to a directed verdict of acquittal in criminal cases. The statute provides the following:

> Where there is no conflict in the evidence and the evidence introduced with all reasonable deductions and inferences therefrom shall demand a verdict of acquittal or "not guilty" as to the entire offense or to some particular count or offense, the court may direct the verdict of acquittal to which the defendant is entitled under the evidence and may allow the trial to proceed only as to the counts or offenses remaining, if any.

O.C.G.A. § 17-9-1(a); Ga. Code Ann. § 27-1802(a). The courts of this state have ruled that only when the evidence actually demands a verdict of not guilty is it error for the trial court to refuse to grant a motion for a directed verdict of acquittal. See Paxton v. State, 160 Ga. App. 19, 285 S.E.2d 741 (1981). The motion should be granted only where there is

no conflict in the evidence and such a verdict is demanded as a matter of law. Zuber v. State, 248 Ga. 314, 282 S.E.2d 900 (1981).

From the above authorities it is clear that under Georgia law a motion for a directed verdict of acquittal was not justified concerning either charge in the instant case. There was clearly some evidence such as to allow the jury to consider both charges against the Petitioner.

Even if this is treated as an allegation concerning the sufficiency of the evidence, the Respondent submits that the evidence was sufficient as to both counts. In relation to the burglary charge, the Supreme Court of Georgia noted, "as can be seen from the statement of facts, however, viewing the evidence in a light most favorable to the verdict, it was sufficient beyond a reasonable doubt for a rational trier of fact to find the defendant entered the victim's home with intent to commit aggravated assault." Williams, supra, at 562, citing Jackson v. Virginia, 443 U.S. 307 (1979).

The Supreme Court of Georgia also addressed this issue pertaining to the murder charge. The court assumed that the argument made was that the charge of burglary, i.e., entering with intent to commit an aggravated assault, and the charge of murder would be inconsistent. The court noted that under Georgia law an aggravated assault was defined as assaulting with intent to murder, rape or rob or assault with a deadly weapon. O.C.G.A. § 16-5-21(a); Ga. Code Ann. § 26-1302. Thus, the two offenses are not legally incompatible. As noted by the Supreme Court of Georgia, the evidence was sufficient to authorize the jury to find the Petitioner guilty of murder. Therefore, no federal constitutional questions are presented by either of these issues.

VI. THE CLOSING ARGUMENT OF THE PROSECUTION DID NOT VIOLATE ANY CONSTITUTIONAL RIGHTS OF THE PETITIONER.

The Petitioner challenges the closing argument made by the prosecution at the sentencing phase of the trial. During the sentencing phase, Petitioner had presented evidence from his mother relating to his military record as a member of the United States Marine Corps. During closing argument, the district attorney stated, "you've got every right to conclude that the one thing they do teach you in the Marine Corps is how to kill." (T. V, 84). The district attorney later stated, ". . . is not the act of a trained U.S. Marine, a man who was trained to kill, a man who was trained to the point that you could even conclude that he enjoyed the killing?" (T. V, 87).

On direct appeal, the Supreme Court of Georgia noted that no approval was expressed of the argument, but "we do not find, as urged by the defendant, that it so appealed to 'anti-patriotic and anti-military sentiments' that the defendant was prejudiced thereby, and find no reversible error." Williams, supra, at 563. The Supreme Court of Georgia went on to note, "the district attorney's argument is an obvious overstatement and its factual incorrectness is readily apparent to anyone. Thus, we do not find that it appealed to the passions and prejudice of the jury so as to render the defendant's trial fundamentally unfair." Id.

This Court has recognized that the prosecution is afforded great latitude in making closing argument. Donnelly v. DeChristoforo, 416 U.S. 637 (1974). In order to prevail on a claim of prosecutorial misconduct when attempting to assert a constitutional violation, it must be shown that the actions were so egregious as to render the trial fundamentally unfair. Id. at 643. It has been noted that comments or acts by the prosecution must be evaluated in the context of the trial as a whole. Cobb v. Wainwright, 609 F.2d 754 (5th Cir.), cert.

denied, 447 U.S. 907 (1980). The Fifth Circuit Court of Appeals in that case also noted that it is not sufficient that the remarks of the prosecution be undesirable or even universally condemned. Id. at 754. See also Darden v. Wainwright, 699 F.2d 1031, 1036 (11th Cir. 1983).

Respondent submits that a consideration of the argument of the prosecution in the context of the trial as a whole clearly shows that the argument did not amount to one that was so egregious as to render the trial constitutionally unfair. The argument was so blatantly an overstatement that the jury would not have allowed it to appeal to passion and prejudice. Therefore, Respondent submits that no federal constitutional issue is presented for review by this Court.

VII. THE CHARGE OF THE TRIAL COURT DURING THE SENTENCING PHASE WAS PROPER.

Petitioner asserts that the trial court erred in failing to charge the jury pursuant to Enmund v. Florida, ___ U.S. ___, 102 S.Ct. 3368, 73 L.E.2d 1140 (1982). Petitioner asserts that the trial court should have given a charge that the state had to prove that the Petitioner actually killed the deceased or intended or contemplated that the life of the deceased would be taken before the death penalty could be returned.

The Supreme Court of Georgia considered this issue on direct appeal. The Court concluded that Enmund was not applicable. In Enmund, supra, the driver of the getaway car in an armed robbery was convicted of felony murder and then given a death sentence, even though he had not been present at the place where the killings took place. Furthermore, no evidence was presented showing that Enmund ordered the killings or that he was part of the conspiracy to commit the killings. Therefore, this Court reversed the death sentence, not because of an error in the charge, but because the imposition of the death penalty in that particular factual situation was unconstitutional.

In the instant case, the evidence clearly shows that the Petitioner entered the victim's house and, by his own admission, hit the victim over the head at least one time. The jury was clearly instructed on the law as to parties to the crime and was also instructed that mere presence would be insufficient to convict the Petitioner. The jury was told that intent was a specific element of both crimes charged which must be proven beyond a reasonable doubt. Furthermore, the jury was instructed that to find the Petitioner guilty of burglary, they must find that he intended to kill as an essential element of the aggravated assault upon the victim. "Thus, the jury's guilty verdicts for malice murder and burglary (with intent to commit aggravated assault) reflect a finding by the jury that the defendant intended and participated in the murder, and it is clear that the jury found that the defendant 'killed or attempted to kill' and 'intended or contemplated that life would be taken,' as required to assess the death penalty under Enmund v. Florida, supra." Williams, supra, at 563-4.

Respondent submits that this Court's holding in Enmund v. Florida, supra, does not require that a specific charge be given requiring that the jury find intent to kill in order to impose the death penalty. Even if such a requirement were made, it is clear that the charge in the instant case instructed the jury that they must find intent to kill before they could convict on burglary and malice murder. As the jury convicted on both of these offenses, it is clear that such a finding was made. Furthermore, this case is factually distinguishable from that in Enmund v. Florida, supra, in which intent to kill was not relevant to the finding that Enmund was an aider and abettor and, thus, guilty of felony murder. Enmund was not present at the scene of the murders, whereas the Petitioner in the instant case acknowledged his presence as well as his participation. Furthermore, there was no evidence of any premeditation or intent to kill on the part of Enmund as opposed to the Petitioner who had threatened the life of his

grandfather, who had been heard to wonder about the value of his grandfather's life in monetary terms and who admitted the brutal beating. Therefore, Respondent submits that no constitutional question is presented by this issue as the record clearly establishes intent to kill.

VIII. THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO SUPPORT A FINDING OF THE TWO STATUTORY AGGRAVATING CIRCUMSTANCES FOUND BY THE JURY.

Petitioner asserts that the verdict of the jury during the sentencing phase was not supported by the evidence in that he asserts the evidence does not support a conclusion that the burglary was committed and because the finding of the seventh statutory aggravating circumstance was inappropriate.

It has previously been noted that there was sufficient evidence present for the jury to conclude beyond a reasonable doubt that the Petitioner entered the home of the victim intending to commit an aggravated assault. Therefore, there was sufficient evidence to conclude that the Petitioner was guilty of burglary and to justify the jury in finding this as one of the statutory aggravating circumstances.

In considering the finding of the seventh statutory aggravating circumstance, the Supreme Court of Georgia noted the following:

> Likewise, the evidence supports the jury's conclusion that the "offense of murder was outrageously and wantonly vile, horrible and inhuman in that in volved torture, and depravity of mind, or an aggravated battery to the victim. . . ."
>
> This 110 pound, 72-year-old victim was beaten over the head with a blunt instrument at least 10 times, crushing his

> skull and spattering his blood over the walls and the clothes and boots of his assailant. Still alive, he was left bleeding on the floor, as the house was set on fire, scorching his arms and head. He died of the bleeding caused by these injuries along with carbonmonoxide poisoning from inhaling the smoke from the fire.

Williams, supra, at 564. The evidence set forth above by the Supreme Court of Georgia clearly supports a finding of the seventh statutory aggravating circumstance beyond a reasonable doubt.

Petitioner additionally challenges the imposition of this aggravating circumstance base on the wording found by the jury. Rather than being charged and finding "torture or depravity of mind or aggravated battery" as set forth in the statute, the jury was charged "torture and depravity of mind or aggravated battery to the victim." Petitioner argues that no torture took place in the instant case. This argument ignores the facts previously set forth. The Supreme Court of Georgia specifically concluded that the evidence was sufficient to allow a rational trier of fact to find either torture or aggravated battery as well as depravity of mind. See Hance v. State, 245 Ga. 856, 268 S.E.2d 339 (1980). Furthermore, Petitioner's argument concerning the disjunctive nature of the aggravating circumstance is without merit. Petitioner would have the statute be totally disjunctive so that any one of the three components of the second major part of the circumstance could be found. The charge given in the instant case actually placed a more stringent requirement on the State before the jury could make a finding of this aggravating circumstance by wording the charge in the manner in which it was presented to the jury.

Petitioner finally asserts that the finding by the Supreme Court of Georgia upholding the seventh statutory aggravating circumstance in the instant case conflicts with the court's prior decision in Phillips v. State, 250 Ga. 336, ___ S.E.2d ___ (1982). In Phillips, supra, the Supreme Court of Georgia concluded that the evidence did not support a finding of the seventh statutory aggravating circumstance. The facts in that case showed that the victim had been shot four times in rapid succession. The only evidence as to prolonged suffering was the fact that the victim lived at least five minutes from the time of the injuries. Id. at 340. The only suggestion that the State gave to support the seventh statutory aggravating circumstance was the fact that the victim suffered pain and anticipated the prospect of death. The court concluded that this was insufficient. The court went on to note that the finding of this aggravating circumstance had been upheld in cases where there was serious psychological abuse prior to death, but the mere apprehension of death immediately before the wounds were inflicted would not amount to such serious psychological abuse.

In the instant case, the wounds inflicted to the victim were not even remotely similar to those inflicted in Phillips, supra. The Petitioner attempts to assert that the only differences are the number of wounds, the locale of the crime and the weapon employed. This ignores the facts of the case. In Phillips, supra, the victim was shot four times in rapid succession and died very shortly thereafter. In the instant case, the victim was beaten brutally over the head with a blunt instrument at least ten times, so that his skull was crushed and his blood was spattered in all directions. The victim was then left alive, bleeding on the floor, while the house was set on fire. The testimony indicated that the victim lived long enough such that the carbonmonoxide poisoning from the fire could have been a partial cause of death. Under these facts, it is clear that the finding of the seventh statutory aggravating circumstance was supported by the evidence.

IX. THE TRIAL COURT PROPERLY DENIED THE MOTION FOR A NEW TRIAL.

Petitioner has set forth no new facts or argument in support of his assertion that the motion for a new trial was improperly denied. Therefore, Respondent asserts that no federal constitutional issue is presented for review by this Court.

CONCLUSION

For the above and forgoing reasons, Respondent respectfully requests that this Court deny the petition for a writ of certiorari filed on behalf of the Petitioner, Harold Glenn Williams.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Mary Beth Westmoreland, a member of the Bar of the Supreme Court of the United States and Counsel of Record for the Respondent, hereby certify that in accordance with the rules of the Supreme Court of the United States, I have this date served a true and correct copy of this Brief in Opposition for the Respondent upon the Petitioner by depositing a copy of same in the United States mail with proper address and adequate postage to:

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This 18th day of May, 1983.

Mary Beth Westmoreland
MARY BETH WESTMORELAND
Counsel of Record for Respondent